

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

PHILIP RAY WORKMAN)	
)	NO. 3:01-0290
v.)	JUDGE CAMPBELL
)	CAPITAL CASE
PAUL SUMMERS, et al.)	

ORDER

Pending before the Court is Defendants' Motion to Dismiss (Docket No. 34). For the reasons described herein, the Motion is GRANTED.

I. Background

Philip Ray Workman, Plaintiff, filed this civil rights action and a motion for a temporary restraining order to stay his then-scheduled execution pending a decision on the merits of the case. Workman alleges that the Tennessee Attorney General and various probation and parole board officials of Tennessee denied his substantive and procedural rights in violation of 42 U.S.C. §§ 1983 and 1985(3) in connection with his request for clemency from the Governor of Tennessee.

Counts One, Two and Three of the Complaint allege violations of 42 U.S.C. § 1983 in connection with Workman's request for clemency. Count One alleges biased procedures, biased advisors, and biased board members. Count Two alleges false and misleading testimony at the clemency hearing. Count Three alleges violation of a right to a full and fair hearing in which to present evidence of innocence. These Section 1983 claims are based on the Fourteenth (due process), Eighth (cruel and unusual punishment), and Sixth (confrontation) Amendments.

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Count Four of the Complaint alleges a conspiracy to interfere with civil rights in violation of 42 U.S.C. § 1985(3) and equal protection of the laws.

Count Five of the Complaint alleges violations of the Tennessee Constitution, specifically, Article I, §§ 8, 9, and 16.

Workman seeks “preliminary and permanent injunctions precluding the state of Tennessee from executing Plaintiff until Plaintiff is provided a full and fair clemency proceeding on his claim of actual innocence before an unbiased parole board with independent legal advisors, and with full and adequate protection of all constitutional rights” in addition to certain other relief. (Complaint, Docket No. 1, Prayer for Relief ¶ 3).

By Order (Docket No. 16) on March 28, 2001, this Court denied the motion for a temporary restraining order to stay the execution. Workman v. Summers, 136 F. Supp. 2d 896 (M.D. Tenn. 2001). The Order, in pertinent part, provided:

The decision whether to grant or deny clemency is a decision for the Governor of Tennessee. The decision of the Governor to grant or deny clemency is not reviewable by this Court. This Court’s review is limited to analyzing the procedures used during the clemency proceedings and not the substantive merits of that decision. See Duvall v. Keating, 162 F.3d 1058, 1061 (10th Cir. 1998).

As the Sixth Circuit has already noted in this case, the Court’s review is to see that there are some minimal procedural safeguards. It is not the duty of the Court to determine the quality of the evidence considered by the Governor or his board. In re Philip Workman, Case No. 00-5367, Order entered March 23, 2001, p. 5.¹ [Now reported at Workman v. Bell, 245 F.3d 849 (6th Cir. 2001).] The issue here is not whether Workman is entitled to a new trial. The issue presented to this Court is whether Workman has met his

¹ In an Order dated March 28, 2001, the Sixth Circuit denied Workman’s petition for a rehearing of this Order.

burden of demonstrating that the Court should issue a TRO staying his execution because the clemency proceeding did not comply with the Constitution.

In Ohio Adult Parole Auth. v. Woodard, 523 U.S. 272, 118 S.Ct. 1244, 140 L.Ed.2d 387 (1998), the Supreme Court divided on whether a person has procedural due process rights with respect to a death penalty clemency hearing. The Chief Justice, joined by Justices Kennedy, Scalia and Thomas, concluded that the Due Process Clause provides no constitutional safeguards as to clemency proceedings. Id., 118 S.Ct. at 1249-50. Justice O'Connor, joined by Justices Breyer, Ginsburg and Souter, concluded that some *minimal* procedural safeguards apply to clemency proceedings. Id. at 1254. In dissent, Justice Stevens argued that the Due Process Clause applies to all proceedings up to the inmate's final execution, including those involving clemency. Id. at 1255.

Thus, the Court's narrowest majority holding is that some minimal level of procedural due process applies to clemency proceedings. See also Duvall, 162 F.3d at 1061. Although some minimal due process protections apply to the clemency proceeding, the decision to grant or deny clemency is left to the discretion of the Governor. See, e.g., Roll v. Carnahan, 225 F.3d 1016, 1018 (8th Cir. 2000).

Justice O'Connor, in Woodard, described the minimal due process safeguards required as follows: "Judicial intervention might, for example, be warranted in the face of a scheme whereby a state official flipped a coin to determine whether to grant clemency, or in a case where the State arbitrarily denied a prisoner any access to its clemency process." Woodard, 118 S.Ct. at 1254. This low threshold of judicial reviewability is based on the fact that pardon and commutation decisions are not traditionally the business of courts and that they are subject to the ultimate discretion of the executive power. Id.

As the Sixth Circuit noted in this case, death row inmates have no constitutional right to clemency proceedings. Workman, supra, p. 4. The Tennessee Governor has the power to pardon and to grant reprieves and commutations in all criminal cases except impeachment. Id.; Tenn. Const. art. III, § 6; Tenn. Code Ann. § 40-27-101. The Tennessee Board of Pardons and Paroles makes, "upon the request of the governor, . . . nonbinding

recommendations concerning all requests for pardons, reprieves or commutations.” Tenn. Code Ann. § 40-28-104(a)(10) (cited in Workman, supra, at p. 4). However, the federal courts “do not sit as super appeals courts over state commutation proceedings.” Id. Ultimately, clemency is a decision for the Governor, not the courts.

Applying the above standards, the Court finds that Workman has not carried his burden for the issuance of a TRO. Specifically, Workman has not shown a strong or substantial likelihood of success on the merits.²

Workman has not shown that he was arbitrarily denied access to the clemency process or subjected to a “flip of the coin” determination. Woodard, 118 S.Ct. at 1254. Neither has he shown that the procedure followed in rendering the clemency decision was “wholly arbitrary, capricious or based upon whim.” Duvall, 162 F.3d at 1061 (citing Woodard, 118 S.Ct. at 1254). No Court has required the level of due process requested by Workman for clemency proceedings. Workman has not shown he is entitled to the “nearly impeccable process” he requests.

Viewing the facts in the light most favorable to Workman, certain Defendants have not engaged in model conduct. However, Workman has received the minimal due process required for a clemency proceeding. Accordingly, the Motion is DENIED.

Id. at 898-99.

The Court of Appeals for the Sixth Circuit affirmed this Court’s Order by Order (Docket No. 22) dated March 29, 2001, as follows:

For the reasons set forth in the district court’s March 28, 2001, order denying Workman’s motion for a TRO, we AFFIRM the judgment of the district court. We also DENY the March 29, 2001, motions for stay of execution pending final resolution of the appeal and to recall the mandate and stay the execution in Case Nos. 96-6652, 00-5367.

Workman v. Summers, 2001 WL 345467 (6th Cir. 2001).

² The Court finds that the remaining criteria for a TRO weigh in favor of Workman, due to the imminent execution.

The Supreme Court then denied a stay of execution and a petition for writ of certiorari on March 29, 2001 (Docket No. 24). Workman v. Summers, 121 S.Ct. 1432 (2001).

The Tennessee Supreme Court, however, subsequently stayed the execution (Docket No. 25). Workman v. State, 41 S.W.3d 100 (Tenn. 2001). The execution having been stayed, this Court closed the file by Order (Docket No. 25) dated March 30, 2001.

Workman filed a Motion to Vacate Order Closing Case (Docket No. 26) on August 28, 2001, which the Court granted by Order (Docket No. 28) dated August 29, 2001. Defendants have now filed a Motion to Dismiss (Docket No. 34).

Contemporaneously with the pending action, Workman filed another Section 1983 case, seeking stay of his execution pending a complete investigation by the Inter-American Commission on Human Rights as to whether his conviction and sentence violated human rights. The Court denied Workman's request for a temporary restraining order to stay the execution. Workman v. Sundquist, 135 F.Supp. 2d 871 (M.D. Tenn. 2001).³

Prior to this case, Workman had filed certain § 2254 habeas corpus actions which resulted in various opinions by the Court of Appeals for the Sixth Circuit. For a summary of the history of the habeas litigation, see, Workman v. Bell, 245 F.3d 849 (6th Cir. 2001). Workman is currently engaged in litigation in state court. Workman v. State, 41 S.W.3d 100 (Tenn. 2001).

³ Workman also filed a Section 1983 action and motion for a preliminary injunction to bar Tennessee from performing an autopsy on his body after his execution. The motion for a preliminary injunction to prohibit the autopsy was granted. Workman v. Levy, 136 F. Supp. 2d 899 (M.D. Tenn. 2001).

II. Motions to Dismiss

In considering a motion to dismiss for failure to state a claim on which relief can be granted, the Court must accept as true all factual allegations in the Complaint. Broyde v. Gotham Tower, Inc., 13 F.3d 994, 996 (6th Cir. 1994), cert. denied, 511 U.S. 1128, 114 S.Ct. 2137, 128 L.Ed.2d 866 (1994). The motion should be granted only if it appears beyond doubt that the Plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Id.

A motion to dismiss for failure to state a claim upon which relief can be granted must be viewed in the light most favorable to the party opposing the motion. State of Ohio ex rel. Fisher v. Louis Trauth Dairy, Inc., 856 F.Supp. 1229, 1232 (S.D. Ohio 1994). The purpose of a motion to dismiss for failure to state a claim is to allow the defendant to test whether, as a matter of law, the plaintiff is entitled to legal relief even if everything alleged in the complaint is true. Mayer v. Mylod, 988 F.2d 635, 638 (6th Cir. 1993).

III. Discussion

Defendants have moved to dismiss the Complaint on the ground that Plaintiff's allegations concerning deprivation of his federally secured rights fail to state a cognizable claim for relief. More specifically, Defendants assert that "[f]or the reasons espoused by the Court in the previous Order on plaintiff's Motion for a Temporary Restraining Order, defendants submit that the complaint fails to state a cognizable claim under 42 U.S.C. § 1983 or § 1985 and that it should be dismissed." As grounds for dismissing the Section 1983 claims, Defendants rely primarily on Workman v. Summers, 136 F. Supp.2d 896 (M.D. Tenn. 2001), Workman v. Bell, 245 F.3d 849 (6th Cir. 2001) and Ohio Adult Parole Auth. v. Woodard, 523 U.S. 272, 118 S.Ct. 1244, 140 L.Ed.2d 387 (1998).

Regarding Workman's claim for conspiracy to deprive him of equal protection under 42 U.S.C. § 1985(3), Defendants assert that the claim must fail since Workman has made no allegation that the actions at issue were the result of a class-based, invidiously discriminatory intent. Smith v. Thornburg, 136 F.3d 1070, 1078 (6th Cir. 1998). Defendants further argue that Workman has failed to allege any "meeting of the minds" among them. McDowell v. Jones, 990 F.2d 433, 434 (8th Cir. 1993).

Finally, Defendants assert that the Court lacks jurisdiction over Workman's claims for deprivation of his rights under the Tennessee Constitution due to the Eleventh Amendment. Workman, in his Response (Docket No. 36) does not contest dismissal of the claims based on the Tennessee Constitution.

Plaintiff, in opposition, argues regarding the Section 1983 claims that under Woodard, "allegations that State actors rigged clemency proceedings so that the Governor would receive false and misleading evidence state claims for relief." (Response, Docket No. 36, p. 3). Young v. Hayes, 218 F.3d 850, 853 (8th Cir. 2000). Workman further asserts that because his clemency proceeding involved a "claim of actual innocence, he was entitled to process that, to some degree, exceeds the minimal process Woodard guarantees" as alleged in Count Three. (Response, Docket No. 36, p. 7). Herrera v. Collins, 506 U.S. 390, 113 S.Ct. 853, 122 L.Ed.2d 203 (1993); Goldberg v. Kelly, 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970).

Regarding the Section 1985(3) claim, Workman argues that class-based animus is not an element of a claim under the Hindrance/Prevention Clause of the statute. Bray v. Alexandria Women's Health Clinic, 506 U.S. 263, 113 S.Ct. 753, 122 L.Ed.2d 34 (1993). Plaintiff further argues that the concerns that gave rise to the Deprivation Clause's class-based animus

requirement do not exist for the Hindrance/Prevention Clause. National Abortion Federation v. Operation Rescue, 8 F.3d 680 (9th Cir. 1993). Finally, Workman asserts that the Complaint alleges a “meeting of the minds” between the co-conspirators.

For the reasons set forth in the Court’s Order (Docket No. 16) denying the Motion for a Temporary Restraining Order, Workman’s Section 1983 claims (Counts One, Two, and Three) are DISMISSED.

Having dismissed the Section 1983 claims, the Section 1985(3) claim is likewise DISMISSED. Section 1985(3) creates no substantive rights of its own, but merely provides a remedy when some otherwise defined right is breached by a conspiracy in the manner defined by that statute. Great American Savings and Loan Assoc. v. Novotny, 442 U.S. 366, 371, 99 S.Ct. 2345, 2348, 60 L.Ed.2d 957 (1979); Nieto v. United Auto Workers Local 598, 672 F.Supp. 987, 991 (E.D. Mich. 1987). There being no predicate violations under Section 1983, or other federal rights, Plaintiff’s Section 1985(3) claim (Count Four) is DISMISSED.

Workman’s Tennessee constitutional claims (Count Five) are DISMISSED as uncontested.

IV. Conclusion

For the reasons described above, Defendants’ Motion to Dismiss (Docket No. 34) is GRANTED.

IT IS SO ORDERED.


TODD J. CAMPBELL
UNITED STATES DISTRICT JUDGE